



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Report submitted by Brazil under article 29 (1) of
the Convention, due in 2012***


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A. General introduction and preparation steps

1. The Federative Republic of Brazil recognizes the competence of the UN Committee on Enforced Disappearances (the Committee) under articles 30 through 34 of the International Convention for the Protection of All Persons from Enforced Disappearance.
2. Additionally, it recognizes the strategic legitimacy of the coordinated international fight against enforced disappearances given the universal and imprescriptible nature of this type of crimes.
3. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) was signed by the Federative Republic of Brazil in February 2007 and approved by the National Congress without reservations in 2010 (Legislative Decree No. 661). The Brazilian Government deposited its instrument of ratification of the Convention with the Secretary-General of the United Nations on November 29, 2010, when the Convention became effective under international law. The Convention was internalised through Decree No. 8,767/16 in May 2016 and has mandatory effects in the national territory since that date.
4. The operational rules established in the Convention reinforce internal guidelines to improve the judicial/legal and administrative systems aiming at fighting and preventing the enforced disappearances, especially in the organization of administrative measures for prevention, redress, recognition, and protection.
5. In compliance with the commitments made internationally, Brazil herein submits the first periodic report on internal operational monitoring, according to the instructions contained in article 29 (1) of the ICPPED.
6. This report shall be submitted to examination by the States Parties and the Committee, which may issue the comments and recommendations it deems appropriate under article 29 (3), and the Committee may also request additional information on the implementation of the convention (article 29/ 4).
7. Brazil considers that the process of preparation of this report is as an opportunity to form an expanded, comprehensive balance of the conditions of protection of human rights in the country, in order to contribute to more efficient planning for the implementation of the Convention within the national territory and for international cooperation.
8. The institution in charge of the interministerial and intersectoral integration of the policies for the promotion and protection of human rights in Brazil is the Ministry of Women, Family and Human Rights – MMFDH, restructured in 2019 through Provisional Measure No. 870. On issues related to international instruments and obligations, MMFDH works in coordination with the Ministry of Foreign Affairs. As for the general institutional framework for the promotion and protection of human rights in Brazil, see Common Core Document (CCD.19, to be submitted, paragraphs 172 through 213).
9. The cross references in this report consider the information contained in Brazil Common Core Document (CCD.19), to submitted in 2019, an integral part of the human rights reporting by the Brazilian Government.

Preparation of the report

10. The general parameters for submitting reports nationwide are described in the CCD, paragraphs 220 to 224.
11. This report was structured in a formal and methodological manner pursuant to the general and specific protocols (core documents) made available by the Committee (Rules of procedure/Working methods/reporting guidelines) and the resolution adopted by the UN General Assembly on April 9, 2014 (RES/68/268).
12. Pursuant to “guidelines CED/C/2”, paragraph 9, the preparation of the report was preceded by an intersectoral consultation and mobilization. The MMFDH received inputs from the Ministry of Justice, the Federal Police, the Federal Prosecution Service, the Ministry of Public Security, the Special Commission on Political Deaths and Disappearances

(CEMDP), and the National Institute of Colonization and Agrarian Reform – INCRA, in addition to organizations of the civil society, such as:

- The Brazilian Forum of Public Security (FBSP);
- Center for Studies on Transitional Justice – CJT/UFGM;
- Commission of Families of the Political Dead and Disappeared of the Institute for Studies on State Violence (IEVE);
- Group Enough with Torture (*Tortura Nunca Mais*), Rio de Janeiro;
- Center for Security and Citizenship Studies – CESeC/Ucam.RJ;
- Documentation Center Dom Tomás Balduino – CEDOC, of the Commission Pastoral da Terra.

13. In preparation of the report, it was submitted comprehensive to social scrutiny. The draft was published on an open online platform, with tools enabling civil society organizations, government officials, and citizens to voluntarily comment, assess, or contribute to the text. An online public consultation was conducted by the MMFDH, which, together with the National Council of Human Rights and UN Brazil, actively sought to encourage the participation of civil society. In spite of the efforts, the contributions received in the public consultation were limited.

B. General legal framework

14. The Brazilian Federal Constitution of 1988 (CF 88) establishes the legal framework for rule of law and national democratic institutions, determining the principles and guidelines organizing the political, legal, and administrative structure of the Government. The legal understanding, which recognizes enforced disappearance as a universal crime, is consistent with the basic constitutional principles, such as the democracy, rule of law and dignity of human person (Art. 1); the independence of the Judiciary Branch (Art. 2); the fundamental rights and guarantees provided for in art. 5, such as the protection of freedom of speech and free expression of thought; inviolability of the right to life, liberty, equality, and security. Article 5 also provides that “the rules defining the fundamental rights and guarantees shall be immediately enforced”.

15. When people are deprived of their liberty in Brazil by the Government, the law is explicit as to the procedures and protection measures to be observed under the principle of legality. In article 37, CF 88 defines that “the direct and indirect public administration of any of the powers invested in Federal Government, States, Federal District, and Municipalities shall respect the principle of legality”. The Constitution (Art. 5) ensures any person the due process of law; the litigants part of lawsuits are ensured to mechanisms of adversary proceedings and legal defense; the prisoners have their physical and moral integrity observed, as well as everyone is ensured reasonable duration of the process and the means that ensure agility of their proceedings.

16. Within the scope of the international relations and cooperation, the Federal Constitution of 1988 defines ten guiding principles (art. 4), which are, accordingly, consistent with the precepts of the Convention:

- (1) National independence;
- (2) Prevalence of human rights;
- (3) Self-determination;
- (4) Non-intervention;
- (5) Equality among the states;
- (6) Defense of peace;
- (7) Peaceful settlement of conflicts;
- (8) Repudiation of terrorism and racism;

- (9) Cooperation among peoples for the progress of mankind;
- (10) Granting of political asylum.

17. Brazil is party to the main international and regional human rights, international humanitarian law, international criminal law, refugee law, and international labor law treaties, as detailed in title II, “A. Acceptance of the international human rights standards” of the Common Core Document (CCD.19, to be submitted, p 54–58).

18. The Federal Constitution includes principles and rights adopted by the country internationally (art. 5). In Brazil, the international treaties and conventions on human rights to which the Federative Republic of Brazil is a party enjoy supralegal status in the country.

19. Brazil accepts the jurisdiction of the International Criminal Court. Such condition is provided both in the Constitution (Art. 5) and the Brazilian Code of Criminal Procedure (Art. 1-I).

20. Given the supralegal status granted by the Constitution to the ratified international human rights treaties, the International Convention for the Protection of All Persons from Enforced Disappearance may be lawfully invoked in administrative and civil proceedings, as well as in actions promoting and protecting human rights. The Convention, however, is not sufficient as a criminal instrument.

21. In the national scenario, the Convention referring to the classification of the crime of enforced disappearance requires implementing legislation. In this case, Bill No. 6240/2013 of August 2013 proposes to add to the Brazilian Penal Code (Decree-Law No. 2,848/1940), article 149-a to exemplify the crime of enforced disappearance of persons as a common crime, and adds item VIII to art. 1 of Law No. 8,072 of July 25, 1990 to consider this a heinous crime. In Brazil, heinous crimes are qualified as extremely serious, not subject to pardon, limitation period, or amnesty.

22. The Bill was examined by the Human Rights and Minorities Commission, Commission on Public Security and Against Organized Crime, and the Commission of Constitution and Justice and Citizenship of the House of Representatives. The Bill received comments in the first two Commissions, but was approved by the Commission of Constitution and Justice and Citizenship (CCJ), according to a decision dated December 12, 2018.¹ The decision is still pending analysis and approval by the Federal Senate, in order to complete the legislative flow required to make the proposal into law.

23. In analyzing such Bill, the Commission on Public Security and Against Organized Crime expressed an unfavorable opinion on the legislative changes proposed, under the justification of “trivialization of heinous crimes requiring greater repressions by the Government”. Also according to the understanding of the reporting congressman, measures to prevent and combat enforced disappearances must take place first in the administrative sphere, as public policies. For more information on the Human Rights and Minorities Commission’s opinion, see paragraph 38 below.

24. Pursuant to art. 144 of the Constitution, which describes institutional competencies for Public Security, Law 10,466/2002, art. 1, provides that: “in case of interstate or international repercussion requiring uniform repression, the Federal Police Department of the Ministry of Justice, without prejudice to the responsibility of the public security bodies listed in art. 144 of the Federal Constitution, especially of the state military and civil police (state police), may investigate, among others, the following criminal offenses:

- (1) Kidnapping, false imprisonment, and extortion by means of kidnapping (articles 148 and 159 of the Brazilian Penal Code), if the agent had political motivation or when committed by virtue of the public position held by the victim;

¹ Full opinion available at:

http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=A1D18BD2139A804747905DB08DF00B6E.proposicoesWebExterno2?codteor=1700688&filename=Parecer-CCJC-12-12-2018.

- (2) Cartel formation (items I, a, II, III, and VII of article 4 of Law No. 8,137 of December 27, 1990); and
- (3) Related to the violation of human rights, which the Federative Republic of Brazil undertook to repress as a result of international treaties to which it is a party”.

25. The Federal Prosecutor’s Office and the Public Defender’s Office perform essential duties to control and protect the human rights, as described in paragraphs 164 to 171 of the Brazilian Common Core Document (CCD.19, to be submitted).

26. Detailed information on the applicable legal and administrative authorities responsible for human rights are contained in paragraphs 188 to 197 of the CCD.19, to be submitted.

C. Enforced disappearance in Brazil

27. There is no law on enforced disappearances in Brazil; however, the country may face forced disappearances perpetrated by persons or groups of persons acting without authorization, notably related to land conflicts in remote rural areas, drug trafficking/anti-drug actions, and internationally.

28. Due to the fact that there is still no specific classification of enforced disappearance in the Brazilian Penal Code and as this category is not included in the statistics of the official bodies, there are no systematic or sufficient formal data, which tends to fall within the jurisprudence called “dark figures of crime of the Criminal Law”.

29. In this regard, it is worth mentioning that the creation in 2017 of the National System for Locating and Identifying Missing Persons of the Prosecutor’s Office (Sinalid) is the most elaborate attempt to include the category of disappearances in the list of official statistics. The Sinalid was established by the National Council of the Prosecutor’s Office – CNMP, as a result of the creation and expansion of the Program for Locating and Identifying Missing Persons (Plid), developed by the Prosecutor’s Office of the State of Rio de Janeiro (MP/RJ). Plid was expanded through the execution of a technical cooperation agreement among the state Prosecutor’s Offices, currently adopted by 25 federal states. The “disappearance” category in the Sinalid standards is still addressed in a generic manner, without the “forced” qualification, as explained in its general objective of:

“Enhancing the knowledge and search for solutions regarding disappearance and trafficking of persons, increasing the models of routines capable of equating the topic nationwide. To produce statistics and diagnoses capable of specifying public policies required for changing the constitutionally guaranteed fundamental rights”.

30. Despite the lack of legal classification of the crime of enforced disappearance in Brazil, the objectives of the Unit for Combating Trafficking in Persons and Smuggling of Migrants (Ministry of Justice/Federal Police – URTP) are aligned with the operational principles established by the Convention.

31. Information and data on “killings by extermination groups and criminal organizations” and “deaths by police actions” can be found in the “3rd Report to the International Covenant on Civil and Political Rights” (2018), paragraphs 84 to 92, in the website of the Ministry of Women, Family, and Human Rights.

32. In the case of disappearances resulting from land conflicts, the NGO “Documentation Center Dom Tomás Balduino – CEDOC” of the Commission Pastoral da Terra has been recording occurrences since 1985. The data are not official and are available in “Massacres no Campo”, see cases of execution with torture, death, or disappearance: Vilhena/RO (2015/2017); Colniza/MT (2017); Pau D’Arco/PA (2017); Lençóis (2017); Canutama/AM (2017).

33. In October 2013, the Prosecutor’s Office denounced 25 state police officers for the disappearance and presumed death of Amarildo Dias de Souza, a bricklayer and resident of Favela da Rocinha, in Rio de Janeiro, whose body was never found. The case, which happened in July 2013, had repercussions on the domestic scene and mobilized civil society

in support of the family. Mr. Dias de Souza disappeared after being taken by police officers to the local Peacekeeping Police Unit – UPP to provide clarifications on drug trafficking. The family reported him missing to the police after 48 hours. The case, still ongoing, resulted in the conviction and arrest of thirteen persons. The bench trial started in February 2014. The police officers were convicted of the crimes of death by torture, concealment of a corpse, and procedural fraud by the Judge of the 35th Lower Criminal Court of Rio de Janeiro.

34. It should be emphasized that the information provided in the previous paragraphs is provided with the intent to promote transparency. Pursuant to article 35 of the Convention, the Brazilian Government considers that its obligations towards the Committee take effect only after the entry into force of the instrument internally. In Brazil, the Convention was internalised on May 11, 2016.

D. Information on the implementation of the Convention per article

Article 1

Elements of non-depreciation of the purpose of the Convention

35. There is no specific law on enforced disappearance in Brazil, nor are there circumstances that support or condone such practice.

36. Bill No. 6240/2013, pending approval by the National Congress, provides for the classification of the crime of enforced disappearance pursuant to the terms of the Convention, individualizes the penalty and defines the chain of criminal accountability, defining the independent nature of such crime, except for the limitations imposed by the “Amnesty Law [*Lei da Anistia*]”, according to the opinion issued by the Human Rights and Minorities Commission, National Congress, 2013.

37. Law No. 13,260/2016 disciplines terrorism in the country and classifies as an act of terrorism the attempt on someone’s life and physical integrity (Art. 2º, V), defining a punishment of imprisonment for up to 30 years, plus sanctions corresponding to the severity of the acts committed. Accordingly, the law protects the individual or collective conduct aiming at defending rights and expressing ideas from being classified as a terrorist practice:

“V – Attempt on someone’s life or physical integrity: Penalty – confinement, from twelve to thirty years, in addition to sanctions corresponding to the threat or violence.”

Paragraph 2. The provisions in this article do not apply to the individual or collective conduct of persons attending political demonstrations, in social, union-related, religious, class or professional category-related movements guided by a social agenda or with the purpose of claiming something aiming at opposing, criticizing, protesting, or supporting a matter in order to defend constitutional rights, guarantees, and liberties, without prejudice to the criminal classification described by law.

38. The Constitution provides for the existence of a Special Court for crimes of terrorism, Art. 122 – 17, a type criminal violation that includes the “attempt on someone’s life and physical integrity”.

“Crimes attempting on the existence, safety, and integrity of the State and the protection and implementation of the domestic economy shall be subject to proceedings and court decisions before the special Court, as instructed by law”.

39. The Brazilian Military Penal Code (Decree – Law No. 1,001 of October 21, 1969) provides for the punishment for the crime of genocide committed by servicemen in times of peace and in times of war, under articles 208 and 401, respectively:

Article 208. Killing members of a national, ethnic, or religious group or any other group pertaining to a certain race, aiming at full or partial destruction of such group. Penalty corresponds to confinement, from fifteen to thirty years.

Similar cases: anyone who performs any of the following with that same purpose shall be punished with confinement, from four to fifteen years:

- (1) Inflict severe injuries to members of the group;

- (2) Subject the group to existence, physical, or moral conditions capable of causing elimination of all of its members or any part of them;
- (3) Force the group to disperse;
- (4) Impose measures intended to hinder births within the group;
- (5) Actively promote the transfer of children from such group to another group.

For genocides committed by service men in times of war the maximum penalty applied is death:

Article 401. Perform, in an occupied military exclusion zone, the crime provided for in art. 208. The maximum penalty is death; the minimum penalty is confinement for twenty years.

40. Law No. 9,299 of August 7, 1996, amends provisions of the Brazilian Military Penal Code and the Brazilian Code of Military Criminal Procedure (Decree-law No. 1,001 and 1,002 of October 21, 1969) so that intentional crimes committed by servicemen against the life of civilians are subject to ordinary courts as opposed to military courts:

Article 82. The military jurisdiction is special, and, except for intentional crimes committed against the life of civilians, the following are subject thereto, in times of peace [...] Paragraph 2 In the case of intentional crimes committed against the life of civilians, the Military Courts shall forward the records of the military police investigation to the ordinary courts.

41. The Constitution restricts the lawful actions of the Government against persons (art. 139) during situations of “State of Exception” according to the following:

Article 139. During the duration of the state of exception enacted pursuant to article 137 – I, only the following measures may be taken against persons:

- (1) Obligation to stay in a certain place;
- (2) Detention in facilities not intended for individuals accused or convicted of ordinary crimes;
- (3) Restrictions related to the inviolability of correspondence, to the secrecy of communications, to the provision of information and to the freedom of the press, broadcast and television, as provided by law;
- (4) Suspension of freedom of assembly;
- (5) Home search and seizure;
- (6) Intervention in the utilities companies;
- (7) Goods request.

Article 2

Enforced Disappearances: classification and concept used to harmonize with domestic laws and regulations

42. Disappearance is a crime category that can be understood in the Brazilian Penal Code as kidnapping, voluntary manslaughter,² and concealment of a corpse. There is also a provision in the Brazilian Penal Code used for bestowing increased gravity upon the act, which is the classification of the crime as “first-degree”; first-degree murder, for example. A crime is regarded as first-degree when there are aggravating factors, such as the use of insidious and cruel means or another resource to make it hard or impossible for the victim to defend himself/herself, including the act of excluding a person from legal protection. In the sense of specifying and improving the domestic implementation of the Convention, Bill No.

² Willful misconduct, which characterizes voluntary manslaughter, refers to the offender’s conscious intention to cause the result.

6240/2013 proposes to include “disappearance of forced nature” in the Brazilian Penal Code with language that takes into account the specificities of the term, as follows:

“To abduct, deter, kidnap, snatch, hold on false imprisonment, or deprive a person of his or her liberty in any other way, as an agent of the Government, its institutions, or armed or paramilitary groups, denying or hiding the deprivation of liberty or suppressing information on the victim’s condition, destination, or whereabouts to whom it may concern or whomever has the right to know it”

Penalty: Confinement, from six (6) to ten (10) years, and fine.

Paragraph 1. The same penalty is incurred by whoever organizes, authorizes, consents, or otherwise acts to conceal, hide, or keep hidden the acts provided for in this article, including by suppressing information or failing to submit documents that enable tracking the victim or his/her remains, or whoever keeps oversight, guard, or custody over the missing person;

Paragraph 2. For the purposes of this article, any injunction, decision, or order to practice the enforced disappearance of a person or to conceal documents or information that enable tracking him/her or his/her remains is clearly illegal;

Paragraph 3. Even if such deprivation of liberty was practiced according to legal hypotheses, the later concealment or denial thereof, or the lack of information on the person’s whereabouts is enough to constitute the crime.

43. The criminal violation proposed by the bill includes the acts that would constitute the crime of enforced disappearance suggested by the Convention, namely the conduct of seizing, incarcerating, kidnapping, or any other form of depriving someone of his/her liberty, even by legal means, on behalf of the State or of an armed or paramilitary group, or upon authorization, support, or consent of the State, concealing the fact or denying information on the whereabouts of a person deprived of his/her liberty or of his/her dead body, or leaving this person with no legal protection for a period longer than 48 hours.

44. Pending the inclusion of enforced disappearance of persons in the Brazilian Penal Code (CP), the following existing provisions in the Brazilian Penal Code may currently be invoked to deal with cases of enforced disappearances in Brazil:

- Article 121. First-degree murder; “III – by using torture or other insidious or cruel means, or any other mean that may result in general danger; V – to ensure the execution, concealment, impunity, or advantage of another crime”. Penalty corresponds to confinement, from twelve to thirty years;
- Article 148. Aggravated seizure; when the act inflicts severe physical or moral suffering on the victim, as a result of ill-treatment or of the nature of the detention. Penalty corresponds to confinement, from two to eight years;
- Article 149. A. Trafficking in persons. Penalty of confinement, from four (4) to eight (8) years, and fine. Penalty may be increased by one third up to one half if there are aggravating factors, especially when the act involves children, elderly, and disabled persons;
- Article 211. Destroy, steal, or conceal a human corpse or part of it. Penalty is confinement, from one to three years, and a fine;
- Article 288. Criminal association with the specific purpose of committing crimes. Penalty is confinement from one (1) to three (3) years. The penalty is increased by up to one half if the association is armed or if it involves the participation of a child or teenager;
- Article 288. A. To create a private militia or “create, organize, integrate, maintain, or fund a paramilitary organization, private militia, group, or squad for purpose of performing any of the crimes provided for in this Code”. Penalty of confinement, from four (4) to eight (8) years;
- Article 350. Arbitrary exercise or abuse of power, or “giving orders or enforcing measures that deprive someone of his/her individual liberty without the legal

formalities or upon abuse of power”. Penalty corresponds to detention, from one month to one year;

- Article 353. Abduction of arrested persons, or “abducting an arrested person in order to ill-treat such person, taking him/her from whoever is currently keeping such person under custody or guard”. Penalty corresponds to confinement, from one to four years, in addition to the relevant penalty for violence.

45. Torture is a type of criminal violation that may be invoked when treating enforced disappearance. Law No. 9,455/1997 defines the crimes of torture as “I – constricting someone’s liberty through use of violence or serious threat, inflicting physical or mental suffering” or “subjecting someone who is being kept under the custody of another, power or authority, through violence or serious threat, intense physical or mental suffering, in order to enforce personal punishment or a measure of preventive nature”. Penalty corresponds to confinement, from two to eight years. Law also establishes that “the crime of torture is not subject to bail and unsusceptible to pardon or amnesty”. Detailed information on the topic may be found in the 2nd Brazilian Report to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, available on the page of the Ministry of Women, Family and Human Rights.

46. Another legal instrument useful in the criminal proceeding for the crime of enforced disappearance is the Heinous Crimes Act [*Lei de Crimes Hediondos*] (Law No. 8,072, July 25, 1990). This law classifies as heinous crimes, in its art. 1/I: murders committed in an activity typical of a death squad, even if committed by a sole offender, and first-degree murders.

Article 3

Obligations of the State to investigate authorship and enforce criminal liability

47. The rules, procedures, and general safeguards related to the legality of the prison, proceeding, and of the initiation of a police investigation are detailed in the Brazilian Code of Criminal Procedure (Decree-Law No. 3,689 of October 3, 1941).

48. Civil and Federal police forces have a key role in investigating and conducting criminal proceedings, without prejudice to the competence of administrative authorities.

49. The Prosecutor’s Office, an institution of permanent and independent nature, is responsible for defending the legal order, as well as the order of the democratic system and of the social and individual interests (see paragraph 164 of CCD.19, to be submitted), as well as for exercising third-party control of police activity, as provided by law; and for requesting investigative efforts and the initiation of a police investigation, when there is evidence of legal grounds for its procedural opinions (Federal Constitution (CF), Article 129).

50. Deprivation of liberty by a person or a group of persons acting with no authorization or consent of the State is already classified as a serious crime under the Constitution and the Brazilian Penal Code, as provided for in the title “general legal framework” of this document and in the provisions reported in Article 2.

Articles 4 and 5

Criminalization of Enforced Disappearances

51. Enforced disappearance it is still not an existing term in the country’s criminal typology, but it may be punished based on correlated, independent criminal offenses, as presented in the paragraphs of article 2 of this report. In Bill No. 6240/2013, enforced disappearance is also deemed an autonomous crime.

52. Brazil is party to the main regional and international treaties and covenants that identify the pervasive, systematic practice of enforced disappearance as a crime against humanity of permanent and imprescriptible nature.

53. The National Congress fully approved the wording of the Rome Statute of the International Criminal Court, through Legislative Decree No. 112 of June 6, 2002. The Rome Statute became effective internationally on July 1, 2002, and became internally effective on September 1, 2002, pursuant to its art. 126.

54. In 2002, Brazil enacted, through Decree No. 4,463, the Declaration of Acknowledgement of the Mandatory Competence of the Inter-American Court of Human Rights, subject to reciprocity, pursuant to art. 62 of the American Convention on Human Rights (Pact of San José) of November 22, 1969.

55. Domestic laws and regulations already consider crimes committed against the life, against the physical integrity, and against the dignity of persons to be very serious crimes, identifying them as non-bailable crimes, unsusceptible to pardon or amnesty. This item has already been referred to in prior sections.

56. The Federative Republic of Brazil acknowledges, hence, the universal and imprescriptible quality of crimes of this nature.

Article 6

Defining the chain of accountability as an obligation of the State Party

57. When it comes to dealing with the enforced disappearance crime, the prevailing laws and regulations related to correlated crimes must be considered, such as heinous crimes, torture, and terrorism, for which the **Constitution** sets forth a chain of criminal accountability that includes accessories, principals, and those who, although able to avoid them, abstain from doing so, as shown in Art. 5, CF 88, item XLIII:

“The law shall consider as non-bailable crimes, unsusceptible to pardon or amnesty, the crimes of torture, illicit trafficking of narcotics and related drugs, terrorism, and those defined as heinous crimes; and the accessories, the principals, and those who, although able to avoid them, abstain from doing so, shall be held liable.”

58. Article 13, Paragraph 2 of the Brazilian Penal Code sets forth that omission is criminally relevant in the situations in which the omitting party should and could act to avoid the result. The duty to act lies with whoever has legal obligation related to taking care, protecting, or overseeing, those who otherwise assumed the responsibility to prevent the result; and whoever caused, with previous actions, the risk of occurrence of the result.

59. The principle of hierarchical obedience is addressed in article 22 of the Brazilian Penal Code among the rules that provide for the imputation of guilt. The subordinate may engage in a conduct other than that of hierarchical obedience when the order is “clearly illegal”, with the constitutional justification of illegality (CF, Art. 37). The imputation of guilt shall depend, however, on the interpretation of the code and the criminal context in view of the principle of “clearly illegal order”:

- CP, Art. 22. “If the act is committed under irresistible coercion or in strict compliance with a not clearly illegal order of a hierarchical superior, only the person who made the coercion or order is punishable”.

60. In Bill No. 6240/2013, however, the use of the principle of hierarchical obedience to justify the practice of enforced disappearance of a person or to conceal documents or information that enable tracking him/her or his/her remains is expressly prohibited (art. 194-A/paragraph 2).

61. The Brazilian Penal Code also sets forth the concept of “common object” (Art. 29) as an aggravating factor in the penalty enforcement (Chapter III, Art. 62). It is a legal instrument for evaluating the degree of cooperation of the practice of the criminal conduct carried out by more than one person and determining individualization of the penalty in different formats:

- Art. 62, CP. The penalty shall also be aggravated for the offender who:
 - Promotes or organizes cooperation in the crime or leads the activity of the other offenders;
 - Coerces or induces others to materially commit the crime;
 - Incites or orders someone subject to his/her authority or not punishable due to personal condition or quality to commit the crime;
 - Commits the crime, or participates therein, through reward or promise thereof.

62. Although still in a propositional format, the criminal violation proposed by Bill No. 6240/2013 comprises whoever organizes, authorizes, consents to, hides, or otherwise acts to conceal, hide, or keep hidden the acts resulting from an enforced disappearance, including by suppressing information or failing to submit documents that enable tracking the victim or his/her remains, or keeps oversight, guard, or custody over the missing person, conceals the acts, or keeps the missing person under custody.

Article 7

Penalties: adequacy, aggravating factors, and mitigating circumstances

63. As there is still no specific legal provision for the crime of enforced disappearance, the provisions with respect to correlated crimes apply (see article 2/paragraph 46) whenever necessary.

64. Nevertheless, the bill under analysis intends to include the new criminal violation in art. 1 of Law No. 8.072 of July 25, 1990 (Heinous Crimes Act), in order to reinforce the gravity of crimes of this nature and apply consistent penalties.

65. Bill No. 6240/2013 contemplates aggravating factors and mitigating circumstances to qualify enforced disappearance crimes that consider nuances of the offended person's situation, such as sex, age, resistance capacity, general health and vulnerability conditions, as well as the use of violent and cruel means in the criminal act:

First-degree enforced disappearance (with aggravating factors)

Paragraph 4. In case of torture or the use of other insidious or cruel means, or if the act results in miscarriage or serious or very serious bodily injury:

Penalty: Confinement, from eight (8) to fifteen (15) years, and fine.

Paragraph 5. If it results in death:

Penalty: Confinement, twelve (12) to twenty (20) years, and fine.

Paragraph 6. The penalty increases from one sixth (1/6) up to one third (1/3):

- If the disappearance lasts for more than thirty days;
- If the offender is a public servant;
- If the victim is a child or teenager, an elderly, a disabled person, a pregnant woman, or if the victim has his/her resistance capacity reduced for any reason.

Plea bargaining

Paragraph 7. The judge can, voluntarily or at the request of the parties, grant penalty reduction of one to two thirds to the offender who, being a first-time offender, has effectively and voluntarily cooperated with the investigation and the criminal proceeding, as long as this collaboration strongly contributes to obtaining the following results:

- (1) Finding the victim with his/her physical integrity preserved; or
- (2) Identifying the other co-perpetrators or parties participating in the criminal act and the circumstances of the disappearance.

Paragraph 8. The offenses provided for in this article are imprescriptible.

Paragraph 9. The Brazilian law shall apply to the events in the General Section of this Code, and the judge can disregard any discharges, extinctions of criminal liability, or acquittals granted abroad if the judge recognizes that such decisions aimed at removing the offender from under investigation or sparing him/her the accountability for his/her acts, or that such proceedings were carried out in a manner that is dependent and biased, therefore inconsistent with the intention of subjecting the person to the capacity of law.

66. Mitigating and aggravating circumstances that classify crimes related to the enforced disappearance are detailed in “Chapter III – of the penalty imposition” of the Brazilian Penal Code and in the provisions in Article 2 of this document.

67. In Brazil, the maximum penalty for crimes deemed very serious, such as first-degree murder, is confinement for thirty years.

68. For enforced disappearances, the alternate to Bill No. 6240/2013 establishes the maximum penalty of twenty (20) years, which may be increased from one sixth (1/6) up to one third (1/3) in case of aggravating circumstances.

Article 8

Limitation statute: prescription and right to redress

69. For purposes of criminal accountability, a crime is deemed committed at the moment of the action or omission, even if the outcome arrives at a different moment (Brazilian Penal Code, art. 4°).

70. Regarding the limitations related to the retroactive application of laws, the Brazilian Penal Code (Art. 2) reinforces the effectiveness of the Amnesty Law domestically, for it limits the retroactive application of laws in the sense of enforcing punishment, and establishes that “No one may be punished for a fact that is no longer considered a crime pursuant to a subsequent law, ceasing by virtue thereof the enforcement and the criminal effects of the conviction decision”.

71. In the ruling of Bill No. 6240/2013, pending in final terms in the National Congress, enforced disappearances are qualified as independent crimes, of imprescriptible and permanent nature and unsusceptible to pardon or amnesty and that are consummated continuously as long as the person is not set free or his/her situation, condition, and whereabouts remain non-clarified, even if such person is already deceased (Art. 1/paragraph 10).

72. Additionally under the wording of such bill, there were efforts to establish a clause (art. 149-A paragraph 2) that prevents evoking the proper obedience as a cause of exculpation, evidencing the illegal and illicit nature of any sort of act of enforced disappearance.

Articles 9 and 10

Brazilian jurisdiction and international cooperation

73. Pursuant to the provisions in Art. 5 of the Brazilian Penal Code, Brazilian law applies, without prejudice to covenants, treaties, and rules of international law, to crimes committed within the national territory. Brazilian law considers for procedural and penal purposes “Brazilian vessels and aircraft, whether public or at the service of the Brazilian government wherever they may be, as well as Brazilian aircraft and vessels, whether merchant or private, which may be, respectively, in the corresponding airspace or at international waters” an extension of the national territory. Brazilian law shall also apply to crimes committed on board of foreign private aircraft or vessels when they are in national territory.

74. Article 7 of the Brazilian Penal Code addresses the extraterritorial applicability of Brazilian law and defines rules for the application of the law to crimes committed by Brazilian citizens abroad and to crimes committed by foreign citizens that may enter a territory under Brazilian jurisdiction.

Pursuant to such rule, the following crimes are subject to the Brazilian law, although committed in foreign territory:

- Genocide, when the offender is Brazilian or domiciled in Brazil;
- One that for a treaty or Convention, Brazil undertook to curb;
- Crimes committed by a Brazilian citizen;
- Crimes committed by foreign citizens against a Brazilian citizen outside the Brazilian territory if (1) extradition was not requested or if it was denied, or if (2) there was a request of Minister of Justice;

- Crimes committed in Brazilian aircraft or vessels, whether merchant or private, when they are committed in foreign territory and are not judged there.

75. For the crime of genocide, the offender is punished according to the Brazilian law, even if acquitted or convicted abroad.

76. For the other cases, the Brazilian Penal Code states that the enforcement of the Brazilian law shall be determined by the contextual analysis of the following elements:

(a) The offender enters the national territory (Brazilian case law shall consider for procedural and criminal purposes the postulate of *aut dedere aut judicare* described in international law and reiterated by the Brazilian Supreme Court);

(b) The act is also punishable in the country where it has been performed (principle of “*non bis in idem*”);

(c) The crime is included among those for which Brazilian law authorizes extradition;

(d) The offender was not acquitted abroad or has not served sentence there;

(e) The offender was not pardoned abroad or, for any other reason, there is no extinction of the punishability under the most favorable law.

77. Pursuant to the Law of Criminal Misdemeanors (Decree-Law No. 3,688 of October 3, 1941), Article 2, the Brazilian law only applies to a misdemeanor committed within the national territory.

78. A Brazilian citizen shall not be granted extradition, as provided for in art. 5/item LI of the Brazilian Federal Constitution.

79. Pursuant to the provisions governed by the Migration Law, Art. 84, a State with such interest may file with a Brazilian authority a request for preventive custody of an individual in order to ensure enforcement of the extradition through diplomatic channels or through a central authority of the Executive Branch. The request may be made prior to or together with the delivery of the request for extradition. Upon verification of the formal requirements for admissibility required by law or by treaty, the request shall be forwarded to an applicable judicial authority, after the Federal Prosecutor’s Office has issued its opinion.

80. The request for emergency preventive custody for a crime committed abroad may only be justifiable if it is based on a conviction decision, records of arrest of a person caught in the act, arrest warrant, or, also, if the indicted person is on the run.

81. Still within the context of article 84 of the Migration Law, the request for preventive custody shall include information on the crime committed and shall be supported by the documents evidencing the existence of an arrest warrant rendered by the foreign State, and, in case of absence of a treaty, upon promise of reciprocity received through diplomatic channels. The request must be recorded through the channel established with the point persons from the International Criminal Police Organization – Interpol in Brazil.

Article 11

The State’s obligation to prosecute under its jurisdiction and the guarantee of a fair trial

82. Brazil does not condition extradition to the existence of an international treaty. Upon inexistence of treaties, the extradition requests shall be governed by the provisions in Law No. 13,445, of May 24, 2017 (Migration Law) and by the rule in Decree-Law No. 394, of April 28, 1938, that regulates extradition. A promise of reciprocity shall also be requested from the requesting State.

83. In case of crimes committed by a suspect (or convict) abroad, and in which the required offender is in the national territory and Brazil denies his/her extradition, the universal principle of *aut dedere aut judicare* shall apply, according to which the requested State must assume the position of keeper of the international common interest, pursuant to the regulations in Art. 1 of Decree-Law No. 394/38:

“Paragraph 2. Upon denial of the Brazilian citizen’s extradition, he/she shall be judged in the country, if the charge raised against him/her constitutes a violation according to

the Brazilian law. If the penalty established by the Brazilian law is more severe than the penalty established by the requesting State, it shall be reduced accordingly.

The procedure shall be the same, when applicable, upon denial of the foreigner's extradition."

84. Pursuant to the provisions in the extradition treaties executed by Brazil and in the Migration Law, the required person shall enjoy, in the requested State, all rights and guarantees granted by domestic laws and regulations and unrestricted access to justice, and he/she shall be assisted by a defense lawyer and an interpreter whenever necessary. Access to consular assistance shall also be granted to the required person, as provided by law.

85. In the abovementioned treaties, Brazil undertakes to perform its obligations in the international instruments for the protection of human rights to which it is a party, particularly observing the principles in the International Covenant on Civil and Political Rights and in the Convention against Torture and other cruel, inhuman, or degrading treatments or punishments (art. 5 and 8), as well as the precepts in its Optional Protocol and in the American Convention on Human Rights.

86. Brazil's Judiciary Branch is independent, enjoys financial and administrative autonomy. External control is exercised by the National Justice Council, pursuant to the Brazilian Federal Constitution.

87. The International Criminal Police Organization – Interpol, represented in Brazil by the Federal Police, is the **focal point of the communication and international cooperation** for cases that require **investigation** of universal crimes and for a formal, systematic communication in the active and passive extradition processes, pursuant to article 84/paragraph 2 and article 98 of the Migration Law (2017), under guidance of the Ministry of Justice.

88. Brazilian law enforcement services are provided by a combination of federal and state bodies:

- (1) Federal Police;
- (2) Federal Highway Patrol;
- (3) Federal Railroad Police;
- (4) Civil Police (state investigative police);
- (5) Military Police and Military Fire Departments (state police and fire departments).

The Federal Police reports directly to the Ministry of Justice and Public Security (CF 88, art. 144). Its mandate includes:

- Preventing, identifying, and investigating crimes;
- Fighting international drug trafficking and terrorism;
- Rendering immigration and border control services;
- Proceeding to investigation of any kind as determined by the Minister of Justice (Decree No. 73,332, of December 19, 1973).

89. The Division of Human Rights of the Federal Police is responsible, according to Normative Ruling No. 13/2005, for "planning, guiding, controlling, and assessing the implementation of protection measures to secure physical and psychological integrity for the deponent under plea bargain, as well as the implementation of police operations related to crimes against individual integrity and dignity, genocide, paedophilia, human trafficking, human organ trafficking, and related to other crimes regarding the violation of human rights, under the remit of the Federal Police Department, set forth in an international convention or treaty, practiced by criminal organizations, and which have interstate or international repercussion and require uniform suppression, when, upon initiation of the implementation in the country, the result has or should have occurred abroad, or reciprocally".

90. According to the agreement in paragraph 9 of art. 149 A in Bill No. 6240/2013, “the judge can disregard any discharges, extinctions of criminal liability, or acquittals conceded abroad if the judge recognizes that such decisions aimed at removing the offender from investigation or sparing him/her the accountability for his/her acts, or that such proceedings were carried out in a manner that is dependent and biased, therefore inconsistent with the intention of subjecting the person to the capacity of law”.

Article 12

Guaranteed right to report and protection to the informant(s)

91. This article of the Convention addresses the individual right to report to the competent authorities that someone has been, even if allegedly, or may be a victim of enforced disappearance. This right must be ensured by administrative and legal measures ensuring protection to the witnesses and those defending human rights against any kind of abuse, threat, or coercion, as well as measures determining that the claims are investigated. In this regard, nationally:

92. The Public Prosecutor’s Office is constitutionally responsible for requesting investigative efforts and filing a police investigation, indicating the legal grounds for its procedural opinions (Art. 129, item 8).

93. Section II: “Fundamental Rights and Guarantees”, Art. 5, item 35 of the Federal Constitution determines that, by law, the Judiciary Branch may not exclude from reviewing any violation of or threat to a right. The same Art. 5, item 33, establishes that “all persons are entitled to receive, from public bodies, information of private interest to such persons or of collective or general interest, which shall be provided within the period established by law, under penalty of being held accountable, except for information which secrecy is vital to the security of society and the Government”. This ensures all, regardless the payment of charges (art. 5/item 34):

(a) The right to petition before the public authorities for defending rights or against illegality or abuse of power;

(b) The right to obtain certificates in government agencies for defending rights and clarification of situations of personal interest.

94. The Information Access Law (Law No. 12,527) was approved in 2011 to ensure the fundamental right of access to information provided for in item 33, art. 5, of the Brazilian Federal Constitution and details procedures to be observed by the public administration subject to the system of this Law.

95. Within the scope of public policies, the Federal Assistance Program for Victims and Threatened Witnesses (PROVITA), created by Law 9,807 of 1999, currently coordinated by the Ministry of Women, Family, and Human Rights, constitutes an advance in the human rights policies and against impunity. Its implementation is responsibility of the Federal Government, the states, and the Federal District. The protection program created in the ‘90s was expanded and there are today two additional protection programs: the Program for the Protection of Human Rights Defenders (PPDDH, created by Presidential Decree 8,724/2016) and the Protection Program for Death Threatened Children and Adolescents (PPCAAM, created by Decree 6,231/2007).

96. Programs for the protection of victims, witnesses, Children and Adolescents threatened with death and those defending human rights are focused on the status of the person. They seek to promote reintegration into social life in safe environments, as the programs do not protect only the testimonial evidence. The legal and psychosocial aspects are pillars for PROVITA.

97. PROVITA’s has several entrance doors. The inclusion into the program may be requested directly to the executing agency by the interested party, the representative of the Prosecutor’s Office, the police authority conducting the criminal investigation, the judge responsible for the discovery phase of the criminal proceedings, or public bodies and entities with human rights responsibilities.

98. The Dial Human Rights – Dial 100 (existing since 2003), a free 24/7 telephone assistance service, is also an important administrative tool of broad access to guarantee the right to report and have the complaints analyzed and sent to the competent authorities. The National Ombudsman’s Office of the Ministry of Women, Family, and Human Rights receives, analyzes, and submits complaints to the organs of human rights protection, defense, and accountability regarding violations related to several matters regarding forced disappearance, considering that this category has not been incorporated yet into the official statistics of the country. Such complaints include violations against persons in deprivation of liberty; trafficking in persons; land and land conflicts; violence against Roma people, afrodescendant traditional communities (*quilombolas*), indigenous peoples, and other traditional communities; police violence and violence against migrants and refugees. The service receives anonymous complaints and, when requested by the informant, ensures source protection.

99. Data on the complaints and reports for Dial 100 are available in the website of the Ministry of Women, Family, and Human Rights. The current Administration is investing in the service as to be more effective and comprehensive.

Articles 13 and 16

Extradition, removal, deportation, or repatriation

100. As provided for in article 13, the States Parties of the Convention undertake to include the crime among those subject to extradition in all international cooperation agreements hereinafter executed. Pursuant to article 16, the States Parties must create a more flexible and sensitive policy for extradition, repatriation, and deportation proceedings, so that a procedural decision may be appealed and subject to revision or even suspension, in order to protect people against forced disappearance in their places of origin. For this, the authorities responsible for assessing the matter must consider the political status regarding human rights in the country at stake or requesting it. In view of the foregoing, the following is deemed nationally:

101. Crimes against humanity, including enforced disappearance of persons, under the Rome Statute of the International Criminal Court, 1998, enacted by Decree No. 4,388 of September 25, 2002, and under the Convention are subject to extradition. Accordingly and considering the provisions in article 28 of the new Migration Law (Law No. 13,445 of May 24, 2017), refugee status shall not be granted to any person committing such crimes.

102. According to the principle of duality, extradition shall be construed as a criminal offense both in the domestic criminal law of the requesting government and in that of the requested government, pursuant to the provisions of the regulatory framework for extradition in Brazil and bilateral agreements.

103. The Brazilian Supreme Court, the highest tribunal in the land, is responsible for originally prosecuting and judging a request for extradition by a foreign government (Federal Constitution, Art. 102, g) to assess the legality and origin of the extradition.

104. The law does not authorize extradition based on political grounds. According to the constitutional provision, section II “Fundamental Rights and Guarantees”, item 52, “no extradition of a foreigner shall be granted for political offense or opinion.”

105. One of the basic principles of the new Migration Laws repudiates collective expulsion or deportation, and no law provides exemptions supporting or authorizing such practice. Article 62 of the same law establishes that no repatriation, deportation, or expulsion of any person shall occur when there are reasons to believe that such measures may jeopardize the life or personal integrity of any person.

106. Article 82 of the Migration Law defines nine circumstances preventing extradition:

- (1) The individual whose extradition is requested to Brazil is born in Brazil;
- (2) The fact motivating the request is not considered a crime in Brazil or in the requesting Government;
- (3) Brazil is responsible, under its laws, to judge the crime imputed to the extradition;

- (4) The Brazilian law imposes a prison sentence of less than two (2) years for the crime;
- (5) The extradited person is responding to the process or has already been convicted or acquitted in Brazil for the same fact giving grounds for the request;
- (6) The punishment is extinguished by the statute of limitations, under Brazilian law or the law of the requesting government;
- (7) The fact is a political crime or opinion;
- (8) The extradited person is liable, in the requesting government, to a court or special jurisdiction; or
- (9) The extradited person is a refugee, under Law No. 9,474 of July 22, 1997, or has been granted territorial asylum.

107. Under the bilateral or multilateral extradition agreements executed by Brazil with other countries, the minimum penalties for extradition vary from six months to two years.

108. Examples of agreements entered into by Brazil with other countries in which crimes against humanity, including forced disappearance of people under the Rome Statute, are among extraditable offenses of a non-political nature:

- Federative Republic of Brazil and Republic of Angola, Treaty signed on May 3, 2005 (Decree No. 8,316 of September 24, 2014);
- Convention on Extradition between the Member States of the Community of Portuguese Language Countries, signed in the Cidade da Praia, Republic of Cape Verde, on November 23, 2005 (Decree 7,935 of February 19, 2013);
- Extradition Agreement between the States Parties of Mercosur and the Republic of Bolivia and the Republic of Chile, of December 10, 1998 (Decree No. 5,867 of August 3, 2006).

Article 14

Mutual legal assistance

109. Mutual legal cooperation in Brazil is based on bilateral agreements, multilateral conventions, or promises of reciprocity. The Ministry of Justice is the Brazilian central authority for international legal cooperation. The Office of the Prosecutor General is the reference authority in Brazil for requests for direct legal assistance intended and arising from Portugal and Canada, specifically in regard to mutual assistance in criminal matter under the Convention on Mutual Assistance in Criminal Matters between the Member States of the Community of Portuguese Language Countries and the Agreement on Mutual Assistance in Criminal Matters entered into by and between Brazil and Canada. For other countries, this role is exercised in Brazil by the Department of Asset Recovery and International Legal Cooperation – DRCI/SNJ, art. 12 of Decree No. 9,360 of May 7, 2018), reporting to the National Secretariat of Justice, of the Ministry of Justice.

110. The International Cooperation Unit (SCI) linked to the Office of the Attorney General of the Republic, Public Prosecutor's Office (MP), has jurisdiction to assist thematic demands for international legal cooperation with foreign authorities and international organizations, as well as in relations with national bodies of international cooperation. A main function of the SCI is to facilitate the access of foreign authorities and international organizations to information on specific deadlines and legal procedures in each country and to seek solutions, including through informal contacts, through cooperation networks for many different legal matters.

111. The MP is currently part of six networks of international legal cooperation:

- Iberoamerican Network of Legal Cooperation (IberRED);
- Iberoamerican Network of Specialized Prosecutors against Trafficking in Persons;

- International Legal and Judicial Cooperation Network of Portuguese Language Countries (Judicial Network of the Community of Portuguese Language Countries (CPLP));
- Hemispheric Information Exchange Network for Mutual Legal Assistance in Criminal Matters and Extradition;
- Asset Recovery Network of the Latin American Financial Action Group (RRAG/Gafilat);
- StAR – Interpol – Asset Recovery Focal Points Platform.

Article 15

Mutual cooperation for victim assistance

112. Brazil already implements the clause of mutual assistance to the victims of disappearance, with special attention to the search, location, and release of missing persons, and, in case of dead people, performing genetic identification, restoring the remains to the legal beneficiaries.

113. As to the investigation and location of missing persons, the Federal Police, Interpol's representative in Brazil, assists in sharing of information and in international police cooperation against several crimes, including disappearance/trafficking in persons. Through an instrument entitled "Notices", differentiated by color and announced in a secure network of police information sharing, Interpol publishes yellow notices to promote the location of missing persons.

114. As to the identification of remains, the Scientific Police Forces of the Institute of Criminalistics – IC of the Brazilian Institute of Forensic Medicine – IML and the Identification Institute (II) reporting to the State Public Security Secretariats (or equivalent bodies), together with the Center for Anthropology and Forensic Archeology – CAAF of the Federal University of São Paulo – Unifesp play a central role. This technical staff works closely with the state police forces.

115. The Center for Anthropology and Forensic Archeology – CAAF was established in 2014 as to develop and improve technical-scientific capabilities in the area of Forensic Anthropology, adopting an interdisciplinary and humanitarian approach, with focus on human rights violations in Brazil.

Articles 17, 18, 20, 21, 22, and 23

Detention, deprivation of liberty, chain-of-custody record, and protections

116. These articles of the convention list a set of procedures regarding the legality of the arrest, the record, and the disclosure of the chain-of-custody record and the protections available to persons subjected to deprivation of liberty, to their family members, and legal representatives, in order to prevent illegal arrests and institutional enforced disappearance. Article 23 addresses training of professionals involved in the custody and treatment of persons deprived of their liberty. Regarding those aspects, the following is set forth internally:

117. The Brazilian Federal Constitution includes in its Article 5 a series of clauses governing custody and complying with the prescriptions set forth in the Convention. Accordingly, the procedural law for the implementation of the Brazilian Penal Code (Brazilian Code of Criminal Procedure (CPP) complies with the procedures listed, including those set forth in article 22 of the Convention (CPP, Art. 655).

118. The compilation and maintenance of official records of arrest warrants, according to the obligation set forth in articles 17 (3) and 21 of the Convention, is held in a database by the National Justice Council, the National Database for the Monitoring of Prisons and the National Register of Arrested Individuals.

119. The National Justice Council – CNJ has a fundamental role of externally controlling the administrative and financial activities developed by the Judiciary Branch and the discharge of the functional duties of judges. CNJ controls the legality of arrests through the Department for Monitoring and Inspecting the Incarceration System and the System for the Implementation of Socio-educational Measures – DMF, established by Law No. 12,106 of

December 2, 2009. Pursuant to article 17(2e) of the Convention, and according to the institutional objectives of DMF, CNJ may establish cooperation and exchange bonds with national, foreign, or supranational, public or private bodies and entities in its field of action, and may also enter into agreements with specialized individuals and legal entities.

120. The Permanent Commission for the Prison System, External Control of the Police Activity, and Public Security is one of the bodies of the National Council of the Public Prosecutor's Office – CNMP that also works in line with the procedures indicated in such articles of the Convention, especially with respect to the control of the legality of the administrative acts and inspection of the incarceration system in Brazil. The Commission has the duty of developing topic studies and specific monitoring activities related to the physical and moral integrity of the arrested persons ensured by article 5, item XLIX, of the Brazilian Federal Constitution; through the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatments or punishments and the American Convention on Human Rights.

121. Article 5 of the Constitution establishes that:

LXI. The arrest may only occur if the person is caught in the act or upon a written and justified judicial order issued by an applicable judicial authority, except in cases of military transgression or military crime, defined by law;

LXII. The arrest of any person and the place where this person is located shall be immediately informed to the applicable judge and to the family of the person arrested or to a person indicated thereby;

LXIII. The person arrested shall be informed of his/her rights, including the right to remain silent, and family and lawyer assistance shall be ensured;

XLVIII. The penalty shall be served in different facilities, according to the nature of the crime, and the age and sex of the convict;

LVII. No one shall be deemed guilty until the convicting criminal court decision becomes final and unappealable;

LVIII. The persons identified under civil procedures shall not be subjected to criminal identification, except in such cases provided by law;

LIX. A private action shall only be accepted in cases of crimes of public action if such public action is not filed within the legal term;

LXIV. The person arrested has the right to acknowledge the identification of the persons responsible for his/her arrest or in charge of his/her police interrogation;

LXV. Illegal arrests shall be immediately reversed by the judicial authority;

LXXV. The State shall indemnify the person convicted by a judicial error, as well as any person that remains arrested for longer than the term established in the court decision.

122. With respect to the circumstances of restriction on the access to information recommended by Article 20, paragraph 1 of the Convention, the Brazilian law only restricts the publicity of the procedural acts when required for the defense of intimacy and social interest (art. 5, item 60, Brazilian Federal Constitution).

123. The Constitution includes safeguards related to confinement and custody when a State of Defense is decreed, which is an exceptional moment established through Presidential Decree to “preserve or promptly re-establish, in restricted and certain places, the public order or the social peace threatened by serious and impending institutional instability or affected by great natural calamities”. While in State of Defense (public safety or emergency), confinements shall respect the time limitation, the principles of legality, publicity, and preservation of physical integrity, as detailed in Art. 136 (paragraph 3) of the constitutional wording:

(1) Confinement for a crime against the State, determined by the entity enforcing such measure, shall be thereby immediately informed to the competent judge,

who shall reverse it in case it is not legal, and the prisoner is granted with the right to require a forensic medical examination from the police authority;

- (2) This communication shall be accompanied by a declaration by the authority on the detainee's physical and mental condition at the moment of application of his/her penalty;
- (3) The confinement or detention of any person must not exceed ten days, except when otherwise authorized by the Judiciary Branch;
- (4) Holding the prisoner incommunicable is prohibited.

124. The legal remedies and guarantees in Brazil allowing legal reassessment of the legality of imprisonment, as well as access to the information necessary to instruct such proceedings pursuant to articles 17 (2f and 3) and 20 (2) of the Convention are:

- *Habeas corpus*, Federal Constitution – item LXVIII: *habeas corpus* will be granted whenever a person suffers or is threatened to suffer violence or coercion in his/her freedom of movement, by illegality or abuse of power;
- *Habeas data*, Federal Constitution – item LXXII: *habeas data* will be granted a) to ensure information related to the petitioner, included in records or databases of governmental or public entities, is known; b) for the rectification of data, when it is not done in a confidential, judicial, or administrative process;
- Writ of mandamus, Federal Constitution – item LXIX: a writ of mandamus will be granted to protect the unquestionable right, not supported by *habeas corpus* or *habeas data*, when the person responsible for an illegality or abuse of power is a public authority or agent of a legal entity when performing duties for the public authority;
- Prison relaxation, Federal Constitution – item LXVI: no one shall be taken into custody or held while the law sets provisional release, with or without bail;
- Custody hearing, Bill No. 554, 2011, of the Federal Senate: presentation of the person arrested before the competent judge to assess the lawfulness of the arrest, to restrain and investigate torture and police violence, and to discourage deprivation by reducing the indiscriminate use of provisional arrests.

125. Law No. 11,530 of October 24, 2007 created the National Program of Public Security and Citizenship – PRONASCI. The program's guidelines are in line with article 23 of the Convention and include, as priority actions, promotion of human rights, intensifying a culture of peace, support for disarmament, and systematic combating of ethnic, racial, generational, and diversity prejudice through the continuing education in human rights of professionals in the area. The National Human Rights Program (PNDH-3), created by Decree 7037/09, and the National Human Rights Education Plan (PNEDH) are guiding documents of the human rights policies in the country (see more information in paragraphs 204 to 208, 211, and 215 to 217 of the CCD.19, to be submitted).

126. Other information on the structure and actions for building the Public Security officials' capacity in human rights are described in the documents "3rd Report to the International Covenant on Civil and Political Rights", 2018, paragraphs 93 and 94, and "2nd Brazilian Report to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment", 2018, article 1 (2), article 2 (6), articles 10, 11, and 16, emphasizing the actions of the National Secretariat of Public Security – SENASP and the National Penitentiary Department – DEPEN of the Ministry of Public Security.

Article 19

Processing of personal and sensitive data on the principles of Human Rights

127. Law No. 13,709 of August 14, 2018 provides for the protection of personal data, including medical, genetic, and biometric data (sensitive personal data), and for the management of personal data. The provisions of the legal wording are in line with the international human rights law for the collection, processing, use, and possible storage of personal data, also in line with the Universal Declaration on the Human Genome of 1997.

128. By law, the following are grounds for the protection of personal and sensitive data (Art. 2/Law No. 13,709): respect for privacy; informational self-determination; freedom of speech, information, communication, and opinion; the inviolability of intimacy, honor, and image; human rights, free personality development, dignity, and exercise of citizenship by individuals.

129. Also, pursuant to this law of 2018, article 18, his/her holder is entitled, from the person having it, at any time and upon request, to:

- Confirm the processing;
- Access the data;
- Correct incomplete, inaccurate, and outdated data;
- Anonymization, blocking, or elimination of unnecessary, excessive data or treated in violation of the provisions of this Law;
- Portability of data to another service or product provider, upon express request and by observing the commercial and industrial secrets, pursuant to the regulation of the controlling body;
- Elimination of personal data processed with the consent of the holder, except in the cases provided for in art. 16 of this Law;
- Information of the public and private entities with which the person in its possession of shared the data;
- Information on the possibility to not consent and the consequences to do so;
- Withdrawal of consent.

130. Law No. 12,037 of October 1, 2009 provides for the criminal identification of the person identified under civil proceedings, regulating art. 5, item 58, of the Federal Constitution, and establishes grounds for the collection, processing, use and storage of genetic and sensitive data, as well as civil, criminal, and administrative accountability for those who permit or promote use other than as stipulated in law, respecting the principles of confidentiality and non-discrimination:

Article 5-A. Data related to the collection of the genetic profile shall be stored in a genetic profile database, managed by the forensic expertise unit. (Included by Law No. 12,654 of 2012);

Paragraph 1. Genetic information included in the genetic profile databases may not reveal persons' somatic or behavioral traits, except for genetic determination of gender, pursuant to the constitutional and international standards on human rights, human genome, and genetic data. (Included by Law No. 12,654 of 2012);

Paragraph 2. Data included in the genetic profile databases shall have a confidential nature, and one allowing or promoting its use for purposes other than those provided by Law or in a court decision will be held liable in a civil, criminal, and administrative manner. (Included by Law No. 12,654 of 2012);

Paragraph 3. Information obtained as a result of similar genetic profiles shall be included in an expert report prepared by an official expert duly qualified. (Included by Law No. 12,654 of 2012).

131. Article 9 of Criminal Law No. 7,210 of July 11, 1984 establishes that persons convicted (with a final and unappealable decision) of serious crimes shall necessarily be subject to the identification of a genetic profile. In such cases, the data shall be used in a regulated and authorized manner as established by law, under the guidance of a competent authority, in this case, the Ministry of Justice. The genetic data of the person identified under civil procedures for criminal purposes shall be stored in a confidential database, under the custody of the Government:

“Those convicted of a serious crime committed intentionally or for any of the crimes provided by art. 1 of Law No. 8,072 of July 25, 1990, shall be mandatorily subject to

the identification of his/her genetic profile, by DNA extraction – deoxyribonucleic acid, an appropriate and painless technique. (Included by Law No. 12,654 of 2012).

Paragraph 1. The identification of the genetic profile shall be stored in a confidential database, pursuant to the regulations issued by the Executive Branch. (Included by Law No. 12,654 of 2012);

Paragraph 2. The police authority, federal or state, may request, in case of an investigation, to the competent judge, the access to the database identifying such genetic profile. (Included by Law No. 12,654 of 2012)”.

132. Law 12,654 of 2012, amending the Criminal Law, determines that the genetic profiles shall be removed from the databases at the end of the term established by law for the crime.

133. In 2013, the Integrated Network of Genetic Profile Databases (RIBPG) and the National Genetic Profile Database (BNPG) were established by Decree No. 7,950 in the official expertise unit of the Ministry of Justice. The BNPG is under the responsibility of the Technical-Scientific Directorate of the Federal Police Department, managed by a qualified federal criminal expert, and aims at storing data from genetic profiles collected to support actions to investigate crimes and identify missing persons. The RIBPG is intended to support criminal investigations through the technical cooperation between different management levels, as well as to create vicarious additional databases that feed the BNPG from time to time.

134. The Universal Declaration on the Human Genome (1997) has been referred to in the national academic environment, by the main journals addressing the bioethical matter in the country, as well as in forensic institutes, courts (jurisprudence), and researches involving genetic study, in order to proceed with the ethical standards and the actions are solely taken for this purpose.

Article 24

Right to memory, truth, and justice

135. Regarding the obligation of the States Parties to guarantee, to the victims of enforced disappearances, the right to form and participate in associations dealing with the matter, it is considered that, in Brazil, the creation of civil associations does not depend on authorization, and state interference in its operation is forbidden (Federal Constitution, article 5), except in the cases of paramilitary organizations, which are forbidden by law.

136. As to the right to justice and access to information, article 5 of the Brazilian Federal Constitution of 1988 establishes that:

V. The right of reply, proportional to the damage, is ensured, in addition to the compensation for property, moral, or image damages;

X. Privacy, private life, honor and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured;

XIV. Access to information is ensured to everyone and the confidentiality of the source shall be safeguarded, whenever necessary to the professional activity.

137. The Law on Access to Information (Law 12,527, 2011) considers any data related to an identified or identifiable individual as “personal information”. This law creates procedures to ensure the right to access to information in a fast and clear manner, as well as the Government’s obligation to protect confidential and personal information, whenever necessary.

138. The Brazilian Civil Code (Law No. 10,406, 2002) establishes important mechanisms, such as the “obligation to indemnify” (materially, assistentially, and morally), the instruments “missing person’s properties curatorship”, “declared death in absentia” and the “provisional succession” of disappeared persons, in order to guarantee death registration documents or a declaratory sentence of absence to give the disappeared legal status to the missing person, allowing the relatives and the victims to be entitled to inheritance, life management, and any other subsequent process (articles 7, 26, and 927 to 954).

139. The right to justice is, as provided for in the Brazilian Civil Code, proportional to the severity and the nature of the damage caused to the victim and his/her relatives/environment and includes monetary damages, health assistance, care of dependents, and moral/psychological repair:

Article 948. In case of murder, the indemnification consists, without preventing other rights to justice, in:

- The payment of expenses related to treatment, the victim's funeral, and family grieving;
- The provision of food to the dependents of the deceased, taking into account the probable years of life of the victim.

Article 949. In case of injury or other damage to health, the offender shall indemnify the injured party from the expenses related to treatment and loss of profits until the end of the convalescence, as well as some other harm that the victim has proven to have suffered.

Article 950. If a crime results in a defect due to which the injured is not able to exercise his position or profession or if his ability to work is reduced, the indemnity, in addition to treatment expenses and loss of profits until the end of the convalescence, shall include a pension corresponding to the importance of work for which he was disqualified, or the depreciation he suffered. [...]

Article 953. The compensation for slander, defamation, or libel shall consist in compensation for the damage caused thereto.

Article 954. The compensation for offense against personal freedom shall consist in the payment of losses and damages to the offended person and, if he/she cannot prove loss, the judge shall equally determine the amount of the compensation, pursuant to the circumstances of the case.

Sole paragraph. The following characterize offences against personal freedom:

- (1) False imprisonment;
- (2) Imprisonment for false or bad faith report or complaint;
- (3) Illegal arrest.

140. As part of the mechanisms already established for the right to memory and information, Law 8,159 of 1991 provides for the national policy of public and private archives, with respect to the obligation of the Government to collect, organize, store, administer and make available documents and collections (public and private) that are evidence and information (article 1), taking into account the guidelines of inviolability of privacy, private life, honor, and image of people. The National Council of Archives – CONARQ, a body linked to the National Archive, was also created to define the national archive policy, as the central body of a National Archives System (SINAR).

141. The Ministry of Justice, together with the civil and technical/scientific police forces, and the Prosecutor's Office play an important role as the competent authority to search for missing persons and organize a unified database on disappearances (see title "B.1 Enforced disappearances in Brazil", on the Program of Location and Identification of Disappeared Persons – Plid). In 2016, the Prosecutor's Office of São Paulo organized and published, together with the Municipal Government of São Paulo, the "Handbook on fighting disappearance: guidelines and rights in the search for a missing person". The publication is freely accessible and aims at guiding families and people interested in locating and identifying a missing person and informing about institutional powers related to the disappearance, possibilities, and rights of the victims.

142. The Brazilian Civil Code also addresses the "personality rights", which guarantees non-transferable, inviolable, and non-waivable condition of identity and privacy, through the right to the name and the prerogative on the disposal of his/her own body. In the case of a dead or missing person, the surviving spouse, or any relative in a straight line, or collateral up to the fourth degree, shall be entitled to apply for the intended measure.

143. In the context of compensation, the Member States undertake to develop and put in place mechanisms to encourage “non-repetition” of violations of human rights and enforced disappearances. In Brazil, a set of coordinated actions in the administrative, legislative, and research fields, as well as civil society organizations, have taken place in the last decades, aiming at promoting “non-repetition”, many of them focused on the principle of “knowing not to repeat”, we list below the main ones:

- In the National Congress, the institution of the Human Rights and Minorities Commission (CDHM) in 1995 as a permanent commission, with duties to receive, evaluate, and investigate complaints of human rights violations; discuss and vote on legislative proposals regarding its thematic area; oversee and monitor the implementation of sector’s governmental programs; cooperate with non-governmental entities; conduct research and studies on the human rights situation in Brazil and worldwide, including for purposes of public disclosure and provision of support to the other Commissions; in addition to addressing matters related to ethnic and social minorities, especially the Indians and the indigenous communities, preservation and protection of the popular and ethnic cultures of the Country (House of Representatives);
- The principle of correction of official registers of deaths regarding persons who died as a result of enforced disappearance or physical, psychological, and torture violence, in accordance with Resolution No. 2, 2017 of the Special Committee on Political Deaths and Disappearances (CEMDP);
- A National Truth Commission (CNV),³ established by Law 12528/2011 and created on May 16, 2012, as a form of reparation, right to truth and, in the medium and long term, as a guideline for non-repetition. CNV’s final report is a comprehensive report, with executive recommendations for the different fronts in the field of human rights;
- Projects and programs at municipal and state levels to establish landmarks and memorial sites, including changing names of urban streets that were named after people involved in repression, violence, and torture schemes: see the programs “Sítios de Memória” and “Ruas de Memória” of the Municipal Government of São Paulo, SP; and Law No. 5,523 of August 26, 2015 of the Legislative Chamber of the Federal District;
- Creation of study/research groups on the matter in universities and the organized civil society, by gathering documents, publications, manifests and creating websites open⁴ for research;
- Construction of monuments honoring the victims of enforced disappearance:
 - (1) Monumento em Homenagem aos Mortos e Desaparecidos Políticos, Gate 10 of Ibirapuera Park, São Paulo, SP (2014);
 - (2) Jardim Memorial Cálice e Grafiteagem em 850 M2 de muro, Dom Bosco Cemetery, Perus, São Paulo SP (2015);
 - (3) Monumento aos Mortos e Desaparecidos Políticos, Campo da Pólvora Squaee, Salvador, Bahia (2015);
 - (4) Monumento aos Mortos e Desaparecidos Políticos, Assis Chateaubriand Avenue, Goiânia/Goiás (2004);

³ <http://cnv.memoriasreveladas.gov.br/institucional-acesso-informacao/a-cnv.html>.

⁴ see <http://memoriasdaditadura.org.br>.
<https://vladimirherzog.org/o-instituto/>.
http://www.desaparecidospoliticos.org.br/quem_somos.php?m=2.
<http://observatorio.nevusp.org/index.html>
<http://www.unicamp.br/unicamp/ju/artigos/direitos-humanos/educacao-em-direitos-humanos-e-o-compromisso-social-da-universidade>.
<http://www.comissaoverdade.unb.br/>.
<https://www.nucleomemoria.com.br/>.
http://sitiodememoria.org/pt/institucion/nucleo-da-preservacao-da-memoria-politica_pt/.

- (5) Monumento aos Mortos e Desaparecidos Políticos, Porto Alegre (1995);
- (6) Monumento Tortura Nunca Mais, Recife/Pernambuco (1993).

- Human Rights Education, based on the 3rd National Human Rights Program (PNDH-3⁵), created by Decree No. 7,037/2009 and updated by Decree No. 7,177/2010. This program implements the human rights as a permanent State policy.

144. The Perus Working Group, under the Center for Anthropology and Forensic Archeology (CAAF) of the Federal University of São Paulo (Unifesp), with technical support of the civil and scientific police forces and with the operational support of the Ministry of Women, Family, and Rights Human Rights and the Special Commission on Political Deaths and Disappearances, developed an internal protocol to address remains, systematic collection of *ante-mortem* and *post-mortem* data, and to store genetic data of missing persons, in line with international practices. In any case, in latest investigations on this and other issues, data and surveys are being investigated to effectively find the precise truth, without ideological misrepresentations.

145. As for rehabilitation, an important national reference is the project “Clinics of Witness”,⁶ created by the Amnesty Commission of the Ministry of Justice, together with the Sedes *Sapientiae* Institute. It is a program for psychological restoration for victims of violence. The Sedes *Sapientiae* Institute⁷ is a mental health, education, and philosophy institute, proposing to analyze and respond to the demands of the social context for the construction of a society based on the principles of solidarity, human rights, and social justice.

146. The victim and witness protection program, PROVITA, of the Ministry of Women, Family, and Human Rights also covers actions for the psychological and social rehabilitation of victims (see article 12).

Article 25

Obligation of the State Party to prevent and criminally punish illegal appropriation of children

147. Brazil, as a State Party to the Convention against Forced Disappearance, reaffirms its commitment to cooperate with other States Parties in the search, identification, location, and assistance of children subjected to enforced disappearance (including sons and daughters of parents subject to enforced disappearance) and illegally appropriated and, in this context, reaffirms its commitment to cooperate, on the adoption or custody system, with the efforts to preserve children’s best interest and ensure the right to have their identity re-established and their family relationships recognized by law, as provided for in the Hague Convention of 1980, art. 7, “c”. The current Administration is studying more effective measures to find disappeared children, as well as of promoting and enabling international adoption without risk.

148. Several legal instruments in Brazil address illegal appropriation or abduction of children as an aggravating circumstance in the criminal action: the Federal Constitution, the Penal Code, and the Statute of the Child and Adolescent.

149. The Constitution incorporates protection of motherhood and childhood as a social right (articles 6, 203, and 227), which shall be prioritized for children, adolescents, and young people. Child protection against all forms of violence and abandonment is a duty of the Government, the family and society, incurring any act of omission in criminal responsibility.

150. In Brazil, the protection of children’s right and right to family life, adoption, and the family are regulated by a specific legislation, the Statute of the Child and Adolescent (ECA, Law No. 8,069 of July 13, 1990), a code in which the principle of “best interests of the child” is a cross-reference, as well as the consideration of the child’s “ability to express” in the cases in which his/her custody is under dispute. Adoption is only considered with the express consent of the parents or legal guardian (Article 45, subsection IV). The ECA provides for

⁵ <https://pndh3.sdh.gov.br/portal/sistema/sobre-o-pndh3>.

⁶ <http://www.justica.gov.br/central-de-conteudo/anistia/anexos/relatorio-final-instituto-sedes-sapientiae.pdf>.

⁷ <http://sedes.org.br/site/instituto-sedes-sapientiae/>.

imprisonment of up to eight years and a fine for crimes of misappropriation of children, including those who facilitate or otherwise contribute to the action by way of payment or reward:

- Article 237. To remove a child or adolescent from the power of those who have his/her legal guard by law or as a result of a judicial order, for the purpose of putting him/her into a foster home: Penalty – confinement from two to six years, and fine;
- Article 238. To promise to give or give one's child to a third party, upon payment or reward: Penalty – confinement from one to four years, and fine. Sole Paragraph. The same penalties apply to those offering the payment or reward or actually doing so;
- Article 239. To promote or help to send a child or teenager abroad, by failing to undertake the legal formalities or aiming at profits: Penalty – confinement from four to six years, and fine. Sole Paragraph. In case of violence, serious threat, or fraud, the penalty is increased: (Included by Law No. 10,764 of November 12, 2013): Penalty – confinement from six (6) to eight (8) years, in addition to the relevant penalty for violence.

151. Forging, concealing, or destructing personal documents supporting identity is a crime provided for in the Brazilian Penal Code, and establishes penalties of up to five years of confinement, and fine. The practice of such acts by a public servant constitutes an aggravating factor or an element of a more serious crime, as are the cases of human trafficking and the illegal appropriation of children subjected to enforced disappearance. The code also criminalizes fraudulent misrepresentation and identity theft, when these entail giving the false identity to a third party to obtain advantage or cause damages to another person, either by manipulating the documents or by using a forged personal document:

Fraudulent misrepresentation

Article 299. Omitting, in a public or private document, a representation that should be included therein or include a misrepresentation or a different representation from what should be included, aiming at impairing any right, creating an obligation, or changing the truth on a legally relevant fact: Penalty – Confinement for one to five years and fine, if the document is public, and confinement for one to three years and fine, if the document is private;

Sole paragraph – If the offender is a public official and uses this office to commit the crime, or if the forgery or alteration involves civil registry settlement, the penalty is increased by one sixth;

Forgery of personal documents (Wording by Law No. 12,737, of 2012).

Article 298 Forgery, in whole or in part, of a personal document or alteration to a true personal document: Penalty – Detention for one to five years and fine.

Suppression of documents

Article 305. Destructing, suppressing, or concealing authentic public or personal document which should not be disposed of, for the benefit of oneself or others, or to the prejudice of others: Penalty – Confinement from two to six years and fine, if the document is public, and confinement from one to five years and fine, if the document is private.

False identity

Article 307. Giving oneself a false identity or to a third person to obtain advantage, for the benefit of oneself or others, or to the prejudice of others: Penalty – detention, from three months to one year, or fine, if the fact does not constitute an element of a more serious crime.

Article 308 – Using a passport, voter registration card, military discharge document, or any other person's identity card as one's own, or giving one's own to a third person's for another person to use: Penalty – detention, from four months to two years, and fine, if the fact does not constitute an element of a more serious crime.

152. The illegal appropriation of children subjected to enforced disappearance (including the sons/daughters of parents subjected to enforced disappearance) incurs in a set of crimes classified in the Brazilian Penal Code as illegal adoption, aggravated human trafficking, when the crime is committed against a child, labor exploitation of minors and abduction of underage child or adolescent, in addition to correlated violations in cases in which there are elements of a more serious crime:

Human Trafficking (Included by Law No. 13,344 of 2016)

Article 149-A. To intermediate, solicit, recruit, transport, transfer, purchase, harbor or receive persons, by means of serious threat or use of violence, coercion, fraud, or abuse, for purpose of:

IV. Illegal adoption.

Penalty – confinement from four (4) to eight (8) years and fine. (Included by Law No. 13,344 of 2016).

Paragraph 1. The penalty is increased by one third to one half if:

II. The crime is against a child, teenager, an elderly person or a person with disabilities; (Included by Law No. 13,344 of 2016);

IV. The victim of human trafficking is taken away from the national territory.

Abduction of underage children or adolescents

Article 249. Abducting a minor under the age of eighteen or interdicting the power of anyone who has such minor under his/her guard by law or judicial order:

Penalty: Detention, from two months to two years, if the fact does not constitute element of another crime.

153. The Federal and state governments, the Federal District, and the municipal governments act collectively to formulate and implement the policy for protecting the child and the adolescent. Internally, bodies from the Judiciary Branch, the Prosecutor’s Office, the Public Defender’s Office, the Guardianship Council, and others in charge of enforcement of basic and social-assistance implement the policy for the protection and custody of the child or the adolescent by the State, focused on the family reinstatement.

154. The central authority to address the international adoption and abduction of minors in Brazil is the Ministry of Justice and Public Security, operated by the Department of Asset Recovery and International Legal Cooperation of the National Secretariat of Justice. In this institutional context, the Federal Administrative Central Authority – ACAF is the internal body responsible for protecting the precepts and ensuring performance of the obligations imposed by the Hague Convention on the Civil Aspects of International Child Abduction (1980), by the Inter-American Convention on the International Return of Children (1989), and by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).

155. Brazil is a signatory to the major international agreements regarding the topic, such as the Convention on the Rights of the Child of 1990 and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 2004, the Supplementary Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2004, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993, and the Convention on the Civil Aspects of International Child Abduction of 1980.

Part II

Articles 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36

Acknowledgement of the duties of the Committee on Enforced Disappearances

156. The Brazilian government acknowledges the duties of the Committee on Enforced Disappearance of monitoring the Convention, including the duties set forth in articles 32, 33, 34, 35, and 36, in compliance with the rules of composition of and election for the Committee, as provided for in article 26, and undertakes to send the list of Brazilian candidates for the biennial election of the members of the Committee before the expiration date established, together with the persons appointed by the other States Parties.

157. Pursuant to the provisions in articles 26(9), 27, and 28, Brazil undertakes to cooperate with the Committee, comply with the administrative decisions of the majority and to assist its elected members to develop the activities under their term of office within the scope of the duties of the Committee.

158. By virtue of the obligation set forth in article 29, the State Party is bound to the obligation of submitting a biennial monitoring report to the Committee, which shall describe the measures of domestic implementation of the Convention. This procedure becomes mandatory as of the date on which the convention became effective in the signatory State. In Brazil, the Convention became effective in May 2016, and, accordingly, the Executive Branch currently gives priority to the submission of such report.

159. The competent domestic institutions and authorities shall cooperate with any request of the Committee for information on wanted persons as provided for in article 30, before the expiration date established and as long as it is in compliance with the precepts in article 30 (2), as well as for considering possible executive recommendations addressed to the country, pursuant to article 30 (3).

160. Brazil acknowledges the competence of the Committee to receive and consider communications presented by individuals or on behalf of individuals subject to its jurisdiction as pursuant to article 31, but such acknowledgement is conditioned to compliance with the conditions listed in article 31 (2).

Part III

Article 37

Prevalence of the victim's interest

161. In case of conflict among the provisions in the Convention, the provisions in the international laws in effect for the State, and domestic legal provisions, Brazil shall use the "prevalence of the victim's interest" as the guiding principle for resolution of the conflict, and shall adopt the code that most favors the victim's and his/her family members' protection and well-being.

Annexes

1. Bill No. 6240/2013.

Bill No. 6240/2013 for characterizing the crime of enforced disappearance, available at <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>.

2. National Database for the Monitoring of Prisons (BNMP) Report (2018).

National Database for the Monitoring of Prisons (BNMP) Report (2018): National Register of Arrested Individuals: National Justice Council, Brasília, August 2018. Available at <http://www.cnj.jus.br/files/conteudo/arquivo/2018/08/987409aa856db291197e81ed314499fb.pdf>.

3. State Violence in Brazil: an analysis of May 2006 Crimes from the perspective of forensic anthropology and transitional justice.

Unifesp (2018) State Violence in Brazil: an analysis of May 2006 Crimes from the perspective of forensic anthropology and transitional justice. Final report, available at https://www.unifesp.br/reitoria/caaf/images/Relatorio_final_2.pdf.

4. Handbook on fighting disappearance: guidelines and rights in the search for a missing person.

Municipal Government of São Paulo. -- São Paulo, State of São Paulo: Municipal Government of São Paulo, 2016. 55 p. ISBN: 978-85-68093-04-7 available at <http://www.mpsp.mp.br/portal/page/portal/Cartilhas/EnfrentamentoDesaparecimento.pdf>.
